

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Roger & Emma Wahl

Docket No. EL06-65-001

v.

Allamakee-Clayton Electric Cooperative

ORDER DENYING RECONSIDERATION

(Issued August 10, 2006)

1. In this order, we deny reconsideration of the Commission's June 15, 2006 Order in this proceeding.¹

I. Background

2. This proceeding concerns the relationship between Roger and Emma Wahl and the Allamakee-Clayton Electric Cooperative (the Cooperative). For purposes of this order, we will recite a brief summary of that history.

3. Roger and Emma Wahl are homeowners in Lawler, Iowa. In 2002 and 2003, they installed a 7500 watt wind generator with photovoltaic solar panels at their residence. On April 24, 2006, the Wahls filed a complaint with the Commission seeking a ruling that the Cooperative is required by the Public Utility Regulatory Policies Act of 1978 (PURPA)² to purchase the output of the Wahls' generation facility pursuant to a net metering arrangement, and that the Cooperative's avoided cost is the rate at which the Cooperative purchases full requirements electric power from its generation and transmission supplier, Dairyland Power Cooperative.

¹ Roger and Emma Wahl v. Allamakee-Clayton Electric Cooperative, 115 FERC ¶ 61,318 (2006) (June 15 Order).

² 16 U.S.C. § 824a-3 (2000).

4. The Commission declined to initiate an enforcement action under section 210(h)(2)(A) of PURPA because it found (1) that it was not appropriate for the Commission to go to court to require a nonregulated electric utility to provide net metering when Congress had enacted a specific provision of law that directed the nonregulated electric utility to consider whether or not to provide net metering on its own,³ and (2) that the avoided cost of a full requirements customer is the avoided cost of the full requirements supplier because it is the supplier that avoids generation when the full requirements customer purchases from a Qualified Facility.⁴

II. Petition for Reconsideration

5. On July 11, 2006, Roger and Emma Wahl filed what was labeled a “request for rehearing” of the June 15 Order. Because the Wahls, in their original complaint, sought an enforcement action under section 210 of PURPA, formal rehearing does not lie, either on a mandatory or discretionary basis.⁵ Thus, while the Wahls have styled their pleading as a request for rehearing, we will treat the pleading, in our discretion, as a request for reconsideration.

6. The Wahls argue in their pleading that the June 15 Order was arbitrary and capricious, and that the Commission denied them their rights under PURPA when it declined to initiate an enforcement action against the Cooperative.

III. Discussion

7. The Commission’s authority to go to court on a petitioner’s behalf to enforce PURPA is discretionary and historically, the Commission has been reluctant to exercise this authority.⁶ Nothing raised by the Wahls on reconsideration convinces us that we have abused our discretion in following our traditional practice and opting not to go to court on the Wahls’ behalf.⁷

³ June 15 Order, 115 FERC at P 9.

⁴ *Id.* at P 10.

⁵ *See Southern California Edison Company*, 71 FERC ¶ 61,090 at 61,305 (1995); *New York State Electric & Gas Corp.*, 72 FERC ¶ 61,067 at 61,340 (1995).

⁶ *Gregory Swecker*, 114 FERC ¶ 61,205 at P 26 and n.25 (2006).

⁷ Our decision not to grant the Wahls’ petition for enforcement permits them to go to court on their own behalf.

The Commission orders:

The July 11, 2006 request for reconsideration filed in this proceeding is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.